

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN JOHN COBB**, on January 31, 2003 at 3:00 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. John Cobb, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Kelly Gebhardt (R)
Sen. Carolyn Squires (D)

Members Excused: Sen. Mike Wheat (D)

Members Absent: None.

Staff Present: Pat Murdo, Legislative Branch
Mona Spaulding, Committee Secretary

Please Note:

These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 167, 1/27/2003; HB 35,
1/23/2003; HB 44, 1/25/2003; SB
252, 1/23/2003; SB 262, 1/24/2003
Executive Action: None.

HEARING ON HB 167

Sponsor: REP. CLARICE SCHRUMPF, HD 12

Proponents: Janice Doggett, Chief Legal Council, Secretary of State's Office; Dave Niss, State Records Commission; John Northey, Legislative Auditor; Arnie Olson, Director, Historical Society; Alicia Pichette, State Auditor; Dal Smilie, Director, Department of Administration

Opponents: None.

Opening Statement by Sponsor: REP. CLARICE SCHRUMPF, HD 12, said HB 167 was the result of an audit performed by the Legislative Audit Division and the request of Secretary of State, Bob Brown. Recommendations were made in the way State agencies manage their public records. The Records Management Bureau of the Secretary of State, the State Archives, and the Montana Historical Society were able to accomplish many of the changes. However, some of the recommendations require Legislative changes. The general conclusion of the Audit Division was that most agencies are not complying with State laws, policies, or practices recommended by records management authorities. An automated box management system was recommended, requiring disposal dates of boxes stored at the State Records Center; requiring notification on State agencies whose boxes have been stored beyond disposal dates; and requiring agencies to adopt and follow sound record management practices. They also recommended Legislation requiring all State agencies to designate a records manager; allocate sufficient resources to implement State management laws; actively review and analyze agency filing systems and procedures; and to clearly define what is a record so that agencies know what to retain. Finally, the Audit Division recommended amending 2-6-211 MCA, to allow the Secretary of State and State Archives to approve alternative storage locations for inactive and permanent records. REP. SCHRUMPF reviewed the bill. She noted the definition of a State government record, is also the definition of a local government record.

Proponents' Testimony: Janice Doggett, Chief Legal Council, Secretary of State, said many people were involved in the creation of the bill. Unnecessary boxes are currently stored at the expense of taxpayers.

Arnie Olson, Director of the Historical Society (HS), said the HS was the permanent keeper of many State records. HB 167 helps HS do the job more professionally. EXHIBIT(sts21a01)

Dal Smilie, Chief Legal Council, Department of Administration, said during the early summer a group of attorneys, representing state-wide elected officials, Greg Petesch and himself, met about records-related matters. We looked at and supported this bill.

Alicia Pichette, State Auditor's Office, said Betsy Griffing, the Chief Legal Officer for the office, also participated in the study. The State Auditor's Office supports HB 167.

John Northey, Legal Council for Legislative Audit Division, member of State Records Committee, said HB 167 will implement procedures indicated in our recent performance audit report.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: REP. SCHRUMPF said knowing what to save, where to file, and where to store files can be complicated. HB 167 is long overdue. It is estimated \$67,000 could have been saved over course of last twenty years, if there had been such a plan.

CHAIRMAN COBB said **SEN. GEBHARDT** will carry HB 167 if the bill passes committee.

HEARING ON HB 35

Sponsor: REP. HAL JACOBSON, HD 54

Proponents: **Becky Buckmaster**, Enlisted Association of the National Guard Auxiliary; **Larry Longfellow**, Veterans of Foreign Wars (VFW); **C. Hal Manson**, American Legion; **Lt. Colonel Moran**, Staff Adjutant Advocate, Montana National Guard (MNG); **Brigadier General Randy Mosely**, Division of Military Affairs (DMA);

Opponents: None.

Opening Statement by Sponsor: REP. HAL JACOBSON, HD 54, said HB 35 corrects an inequity that exists regarding veterans' hiring preference. Currently, it does not include the Montana National Guard (MNG) or the Montana Air National Guard (MANG). The MNG and MANG have seen a dramatic change in their role. They serve at the discretion of the Governor of Montana, and they have become the vanguard for the military defense of the country. They go overseas. Because of the expanded role, it is appropriate to include them in the veterans' hiring preference. REP. JACOBSON distributed proponent testimony from **Roger Hagan, Officer and Enlisted Associations of the Montana Guard**, who is not able to attend the hearing. **EXHIBIT(sts21a02)**

Proponents' Testimony: **Brigadier General Randy Mosely, Deputy Director, Division of Military Affairs (DMA)**, said HB 35 amends and expands current veterans' preference. It allows broadening the definition and the conditions required to obtain it. It includes the MANG and MNG. He referred to **EXHIBIT(sts21a03)**. This

is an important bill for the agency because there are soldiers in every town across Montana. It is important for recruiting, retention and recognition of service. Article 2, Declaration of Rights of the Constitution, Section 35: "Servicemen, servicewomen and veterans: The people declare that Montana's servicemen, servicewomen and veterans may be given special considerations determined by the Legislature." The MANG and MNG fits that definition. Until they are federally activated, the Guards are State organizations. In times of disaster or national emergency, we all expect them to be there. HB 35 provides for inclusion in preference incentives provided other servicemen and servicewomen after six years of service, whether or not 180 days have been served consecutively. Over half of the force structure in the Army is in the Army National Guard. As impending overseas missions are considered, there is a wide mobilization. They are also the first emergency response force the Governor calls. Since 9/11, the guard has served on active duty of different types, including State air force installations, the Olympic games, and airports. They do not always serve over 180 consecutive days; but during their term of service, they may do multiple deployments. After six years, there has been a lot of service--both State and federal.

Becky Buckmaster, representing the Enlisted Association of the National Guard Auxiliary, rose in favor of HB 35.

Larry Longfellow, Veterans of Foreign Wars, rose to support HB 35. He said leadership of the State veterans' organizations have met, and all do support the bill.

Hal Manson, representing the American Legion of Montana, said the total force concept of the Department of Defense requires that all reserves and national guard units be as available to duty in an emergency as is the active force. Because of that, people in the MNG have been on active duty in other countries in the last few years, without a declared war. The American Legion considers these people to be veterans. They should be qualified for the veterans' employment preference.

Opponents' Testimony: None.

Questions from Committee Members and Responses: **SEN. SPRAGUE** asked why six years was determined to be the appropriate length of time served. **Gen. Mosely** said the term of enlistment for the MNG, non-prior service, is six years. **SEN. SPRAGUE** asked it was a re-up bonus. **Gen. Mosely** said no, soldiers qualify after six years whether they leave the guard or re-up.

SEN. SPRAGUE asked why the Navy and Marines were not mentioned in the bill. **Gen. Mosely** said the MNG is

organizationally unique. Under federal law most veterans' statutes are under Title 10. The reserves, not being State organizations, have no tie to the State but serve under Title 10 duty. The MNG is unique in that it has a dual role--both a member of the federal reserve and the MNG at the same time. It serves as a State organization unless it is federally activated. When federally activated, the MNG goes on Title 10 duty; when not federally activated, the MNG serves under Title 32. Service of at least 180 consecutive days on Title 10 duty is referred to in most statutes as a requirement for veterans' status. **SEN. SPRAGUE** asked about the Navy and Marines. **Gen. Mosely** said they are already entitled to veterans' preference.

SEN. GEBHARDT asked how much weight went with the preference. **Gen. Mosely** said, in Montana, there is an employment preference policy which is basically a tie-breaker. If two people are equally qualified, it breaks the tie. He said the only thing it does for the MNG that it does not do for the other reserves, because it is a State organization, is make provision not to serve 180 contiguous days. Others are not on call for national disasters and emergencies. Someone can join the Army or Air Force reserve and never have to serve active duty.

CHAIRMAN COBB asked several questions relative to changes in language. **Lt. Col. Moran** said the changes were intended. Where **CHAIRMAN COBB** questioned the wording, it was a "term of art." **Lt. Col. Moran** said the way the law now reads, a National Guardsman can never be considered a veteran. An active duty military person, who never set foot in Montana, could apply for a State job and get preference over a Montana Guardsman who maybe fought fires, helped with floods, or guarded airports. **{Tape: 1; Side: B}**

Closing by Sponsor: **REP. HAL JACOBSON**, said HB 35 expands the universe of veterans hiring preference to include all who should be included.

CHAIRMAN COBB said **SEN. SPRAGUE** will carry to the floor if HB 35 passes committee.

HEARING ON HB 44

Sponsor: **REP. FRANK SMITH, HD 98**

Proponents: **Pat Clinch**, Montana State Council of Fire Fighters (MSCOFF); **Mike O'Connor**, MPERA; **Tom Schnider**, President, Montana Public Employees Association MPEA

Opponents: None.

Opening Statement by Sponsor: REP. FRANK SMITH, HD 98, said HB 44 has been modified to bring a fiscal statement without impact. In the beginning the bill included one group of people. More have been added. There are other bills in the Legislature that will coordinate with HB 44. This bill is longer than SEN. JOHN BOHLINGER's. SEN. SMITH distributed proponent testimony by Roger Hagan, Officer and Enlisted Associations of the Montana National Guard, who was unable to be at the hearing. EXHIBIT(sts21a04)

Proponents' Testimony: Mike O'Connor, Executive Director, Public Employees Retirement System (PERS), said the bill, with amendments, is the same as SB 66. CHAIRMAN COBB asked if it was exactly the same. REP. SMITH said yes. SB 66 just passed out of the Senate on 3rd reading 50:0. Coordinating amendments have been added to the general revisions bill. SEN. SMITH said he preferred to have one bill.

Pat Clinch, President, Montana State Council of Professional Fire Fighters, said the fire fighters in the Fire Fighters Unified Retirement System and the Public Employees Retirement System support the bill. Tom Schneider, President, Montana Public Employees Association, who cannot be at the hearing, supports the bill.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: REP. SMITH said REP. DAVE GALLIK had HB 213 that would coordinate also. SEN. JOHN BOHLINGER wants to carry the bill to the floor.

HEARING ON SB 252

Sponsor: SENATOR CAROLYN SQUIRES, SD 34

Proponents: Elaine Graveley, Secretary of State's Office; Darrell Holzer, AFL-CIO; Matt Leow; Montana Public Interest Research Group (MT-PIRG); Brad Martin, Montana Democratic Party; Vickie Zeier, Missoula County

Opponents: None.

Informational: Robert Throssell, Montana Association, Clerks and Records

Opening Statement by Sponsor: **SENATOR CAROLYN SQUIRES, SD 34,** said SB 252 had one primary purpose, to improve citizen participation in the election process. Beginning in 1992, there has been a dramatic decline in voter turn-out percentage. In 1994, the turn-out was 69.9%; in 2002, it was 54.5%. Montana has a large senior population. SB 252 would help them, and others who have difficulty getting to the polls. In 1999 Montana's absentee voter statutes were amended to require only that the elector make that choice. SB 252 removes the requirement that the elector must repeatedly submit an absentee request to exercise their vote-by-mail option. It places the option for each eligible elector to notify their election office, that in all future elections they wish to automatically have their ballot mailed to them. It will then be mailed until the request is rescinded. It will save counties money, and help to improve the accuracy of each county's voter file. SB 252 will encourage more citizens to participate in the voting process.

Proponents' Testimony: **Vicky Zier, Missoula County Clerk and Recorder/Treasurer,** supports the bill. It makes it easier for elderly and infirm voters. Every election there are voters who request to be put on a list to automatically receive an absentee ballot. SB 252 eliminates a redundant process, and makes it easier for voters. She believes it will increase voter participation in local, school and special elections. Many people who vote by absentee ballot do not know to request an absentee ballot for elections because they are unaware of the dates. Many elderly and infirm voters do not vote in these elections. SB 252 requires the election administrators to send a ballot for each election the elector is entitled to vote. SB 252 will save time for the election office. Labels and envelopes can be prepared in advance. There will be less paper. It will reduce the possibility of losing individual request letters. Electors need to keep their addresses current. It will be up to the elector to find out where the ballot is if they have moved. The ballot is returned if undeliverable. **Ms. Zier** believes the time-savings in preparing the permanent absentees in advance outweigh the impact of incorrect addresses. If a ballot is returned undeliverable, the elector is removed from the permanent absentee list.

Elaine Graveley, Deputy of Elections, Secretary of State's Office, rose in support of SB 252. They are ready and willing to prepare the necessary forms.

Brad Martin, Executive Director, Montana Democratic Party, rose in strong support of SB 252. One of the problems confronting both political parties is declining voter participation. Both parties support increased use of absentee ballots. Turnout is not just a strategy; it is a virtue. In 1999, the Legislature increased

access to voters by removing onerous stipulations. Now, an absentee ballot is simply requested. It is more important that citizens vote than how they vote. SB 252 lets voters decide if they want to sign up for a permanent absentee ballot. The Democratic Party has three criteria by which to judge almost all Legislative measures that affect voting: 1) Is voter access and opportunity increased? 2) Are obstacles and/or bureaucracy reduced? 3) Will turnout possibly increase? Absentee ballots definitely help the homebound, small business owners, traveling salespeople, mothers of small children, commuters, and many people who think it's just the way it should be.

Darrell Holzer, AFL-CIO of Montana, rose in support of SB 252. In addition to all the reasons already stated, his primary capacity in the State Federation is to encourage 47,000 members to participate in the election process. Any effort that can be made to improve voter participation is critically important to the survival of the democratic process.

Matthew Leow, Montana Public Interest Research Group, rose in support of SB 252. This bill will help increase voter turnout, and it is uncontroversial.

Opponents' Testimony: None.

Informational Witness: **Robert Throssell, Montana Association of Clerks and Recorders**, said he was available for questions.

Questions from Committee Members and Responses: **SEN. SPRAGUE** noted SB 252 has no fiscal impact. He asked if the Secretary of State's Office would do the work and spend the money. **Mr.**

Throssell said no. Developing and maintaining the list will be the responsibility of the individual clerk and recorder election administrator. While there is some expense setting up the list, there may be savings by using the list and relying on it over and over. His association has not taken a position on SB 252. Absentee voting has grown exponentially. While a cost is incurred, there is a savings at the polling place.

SEN. GEBHARDT questioned the likelihood of fraud. **Ms. Zeier** said it was not great. When the elector fills out the form requesting to become a permanent absentee voter, the signature is verified and a card issued. The form is saved in a file. Every election thereafter an absentee ballot will be sent. At the polling place, the register is marked absentee. If an elector moves and did not get a ballot, then goes to the poll, the register will be marked absentee. The judges will then call the election administrator, who verifies if the ballot has been received. If it hasn't, the elector signs an affidavit before being allowed to vote.

SEN. GEBHARDT said the cost of the polling booth would have to be incurred regardless. The overall cost of an election appears to increase. **Ms. Zeier** said she believed most people already requested absentee ballots. The difference is they don't have to submit a form repeatedly. She doesn't believe the number of absentee ballots will substantially increase. Absentee ballots will help the elderly and the homebound.

SEN. GEBHARDT, referring to Seattle, said so many people voted absentee that now ballots are routinely sent to everyone. They are used because of convenience. The polling place still is open. Ballots can be taken there, or returned by mail. **SEN. GEBHARDT** said his concern was that someone in the future would say they were given an unfunded mandate.

SEN. SPRAGUE raised the issue of unintended consequences. He used the example of an elderly person where, logically, it would not be expected the person would live a long time. If the ballot is continually renewed, there may be cause for mischief. **Ms. Zeier** asked that a time frame not be less than four years, if one is enforced, because elections fall in four-year cycles.

SEN. SPRAGUE asked **SEN. SQUIRES** if she thought there was increased likelihood for mischief. She said that there was a greater chance the way it is now. If an elector has a post office box, moves, and doesn't change the address, it is possible to submit two ballots. She said absentee ballots were different from drivers' licenses because a person has the right to vote. **{Tape: 2; Side: A}** She said that one unintended consequence was that SB 252 will force candidates to present themselves to the general public sooner.

CHAIRMAN COBB asked what other states did, and if they had problems when people moved. **Ms. Zeier** said several states used permanent absentee registration lists. She said dealing with address changes was on-going in any case. If a person moves and registers at a new address, a notice is sent. If a person moves within 30 days of the election, and the forwarding address is still active, a ballot will be received at the old address. That is a benefit because the elector is still able to vote. If the address can no longer be forwarded, it will sit in a box until claimed, or until after the election. The election official will then go into the system to indicate the elector never voted. The MBRA process will then be initiated to notify the elector of cancellation if he or she doesn't vote or update the register. Lists are updated now by the MBRA process.

CHAIRMAN COBB asked which states use permanent absentee ballots. **Ms. Zeier** said she knows Texas and Washington do.

CHAIRMAN COBB asked if many absentee ballots were undeliverable. **Ms. Zeier** said very few, and she is from one of the larger counties.

Closing by Sponsor: SEN. SQUIRES said she would look at what other states are doing before Executive Action is taken.

HEARING ON SB 262

Sponsor: SENATOR GARY PERRY, SD 16

Proponents: Elaine Graveley, Secretary of State's Office

Opponents: None.

Opening Statement by Sponsor: SENATOR GARY PERRY, SD 16, said SB 262 was a wording bill that clarifies code. He gave the committee an instance from last January when a Legislator resigned, and it was almost impossible to comply with the 15-day replacement requirement. It was not clear what would happen if an appointment could not be within the 15-day requirement. Article 5, Section 7, did say "a vacancy in the Legislature shall be filled by special election for the unexpired term unless otherwise provided by law." SEN. PERRY interpreted that to mean the part "otherwise provided by law" was about to expire; which meant a special election would be necessary; which meant it would cost about \$80,000 for Gallatin County. SEN. PERRY says he chose to refer to Robert's Rules of Order. He selected a nominating committee, chose three persons from a list of six, and got the job accomplished. The problem was that half the Republicans in the county were angry because the procedure didn't involve enough of the people. They felt they had insufficient input into the selection process. It is clear the clarification and change is needed to reflect reality. SB 262 changes time frames, not mechanics. Seven days has been allowed for the Secretary of State to notify the County Commission and the County Central Committee. Rather than the Secretary of State notifying only the County Commission, the Secretary will notify both the County Commission and the County Central Committee. The Central Committee, in order to allow their monthly meeting, then has 45 days to meet and provide nominees. The Appointing Board has 15 days to make appointments and notify the Secretary of State's office. If the County Central Committee does not perform their function, the County Commission can make the appointment. If the Legislature is in session, the time-frame has to be adjusted in order to work: Seven days is allowed the Secretary of State's Office for notification, and five days for the County Central Committee and County Commission to provide an appointment.

Proponents' Testimony: Elaine Graveley, Secretary of State's Office, stood in support of SB 262.

Opponents' Testimony: None.

Questions from Committee Members and Responses: Members of the committee discussed the time-lines with the **SEN. PERRY** and **Ms. Zeier**. Everyone agreed that a change was needed.

Pat Murdo said HB 91 also addresses this issue. The two bills can't be coordinated. **CHAIRMAN COBB** asked all parties to get together and make a recommendation to the Committee.

Closing by Sponsor: **SEN. PERRY** assured the Committee that SB 262 did take multi-county committees into consideration.

Announcements: **CHAIRMAN COBB** said no Executive Action would be taken until Monday.

ADJOURNMENT

Adjournment: 4:25 P.M.

SEN. JOHN COBB, Chairman

MONA SPAULDING, Secretary

JC/MS

EXHIBIT (sts21aad)